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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 TL Harvey,

10 Plaintiff,

11 v.

12 Maxwell & Morgan P.C., et al.,

13 Defendants.  
14

No. CV-24-00276-PHX-KML

**ORDER**

15 Defendants William Day, John Coleman, Raymond Nieves, Audrey Gibson, Dallas  
16 Paulsen, FirstService Residential of Arizona, LLC, and Rancho El Dorado Homeowners  
17 Association (collectively, “defendants”) seek an award of approximately \$35,000 in  
18 attorneys’ fees.<sup>1</sup> (Doc. 73.) Plaintiff TL Harvey argues his federal claims were not frivolous  
19 and therefore defendants are not entitled to an award of fees. (Doc. 77 at 1.) Not all of  
20 Harvey’s federal claims were frivolous and defendants did not identify which fees would  
21 not have been incurred but for defending the non-frivolous federal claims. The motion for  
22 attorneys’ fees is denied.

23 In addressing motions to dismiss Harvey’s amended complaint, the court identified  
24 fourteen claims Harvey appeared to be pursuing. (Doc. 63 at 3-4.) Those claims included  
25 constitutional claims, racial discrimination in the making or enforcing of contracts, breach  
26 of contract, violations of the Fair Housing Act, civil RICO, criminal mail fraud, common

27 <sup>1</sup> Defendants also seek an award of \$60.52 in costs under A.R.S. § 12-341 and Fed. R. Civ.  
28 P. 54(d). Local Rule 54.2(a) required defendants file a bill of costs within fourteen days of  
final judgment. Defendants did not comply with that rule and do not offer any explanation  
why. The request for costs is denied based on the failure to comply with the applicable rule.

1 law fraud, and breach of fiduciary duty. It is undisputed some of Harvey’s state and federal  
2 claims allow for an award of attorneys’ fees to a prevailing defendant. *See* A.R.S. § 12-  
3 341.01 (breach of contract); *Green v. Mercy Hous., Inc.*, 991 F.3d 1056, 1058 (9th Cir.  
4 2021) (Fair Housing Act); *Harris v. Maricopa Cnty. Superior Ct.*, 631 F.3d 963, 975-76  
5 (9th Cir. 2011) (Section 1983 claims). But the standard for awarding fees differs between  
6 state and federal law.

7 Arizona’s fee-shifting statute allows for an award of attorneys’ fees to the  
8 “successful party” in a breach of contract action. A.R.S. § 12-341.01(A). Under this statute,  
9 Arizona courts do not require a successful plaintiff make a different showing than a  
10 successful defendant. *Cf. Schwartz v. Farmers Ins. Co. of Arizona*, 800 P.2d 20, 25 (Ariz.  
11 Ct. App. 1990) (applying same test to successful defendant as to successful plaintiff).  
12 Federal law differs. Under the federal fee-shifting statutes relevant here, prevailing  
13 plaintiffs are awarded fees “as a matter of course.” *Harris*, 631 F.3d at 971. But prevailing  
14 defendants are awarded fees “only in exceptional circumstances.” *Id.* (simplified). Under  
15 the federal standard, a prevailing defendant may recover fees only after showing the federal  
16 claims were “frivolous, unreasonable, or without foundation, even though not brought in  
17 subjective bad faith.” *Id.* (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412,  
18 421 (1978)).

19 When a plaintiff is pursuing both state and non-frivolous federal claims, prevailing  
20 defendants are entitled only to the fees that “would not have been incurred but for the  
21 inclusion of” the state claims. *Id.* at 972. That is, if some of the federal claims were not  
22 frivolous, “the only fees that may be awarded are those incurred for work performed  
23 exclusively in order to provide a defense against” the state-law claims or frivolous federal  
24 claims. *Id.* at 973.

25 Defendants’ motion for attorneys’ fees argues all of Harvey’s federal claims were  
26 frivolous. A claim is frivolous if the result was “obvious” or the claim was “wholly without  
27 merit.” *Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 666 (9th Cir. 2007). Many of Harvey’s  
28 federal claims came perilously close to frivolous. For example, Harvey’s claims that

1 defendants could be sued for violating his constitutional rights were dubious and the court  
2 dismissed those claims without leave to amend. (Doc. 63 at 7.) But Harvey’s federal claims  
3 involving the Fair Housing Act (“FHA”) were not frivolous. In addressing those claims the  
4 court explained “[h]omeowners associations . . . may be liable under the FHA in certain  
5 situations.” (Doc. 63 at 9.) Harvey had not alleged sufficient facts to state an FHA claim,  
6 but the court granted him leave to amend because it appeared possible he could state one.  
7 (Doc. 63 at 9-10.) Harvey did not amend but it was not “obvious” he had no viable FHA  
8 claim.

9 Harvey also alleged a claim under 42 U.S.C. § 1981 which prohibits purposeful  
10 racial discrimination in the making or enforcing of contracts. Harvey did not have any  
11 plausible § 1981 claim against “each and every defendant,” so his § 1981 claim against  
12 certain defendants at least came close to frivolous. But it was possible Harvey had a viable  
13 § 1981 claim against the homeowners association and he was granted leave to amend that  
14 claim. (Doc. 63 at 8.) Based on the limited information available regarding the § 1981  
15 claim, it was weak but not wholly without merit. *See Gammel v. Kuna Rural Fire Prot.*  
16 *Dist.*, No. 1:19-CV-00390-REP, 2021 WL 5165675, at \*2 (D. Idaho Nov. 5, 2021) (“Just  
17 because a claim is weak does not mean it is frivolous.”).

18 Neither Harvey’s FHA claims nor his § 1981 claim qualified as frivolous under the  
19 demanding standard. Defendants cannot recover fees incurred in litigating those claims.  
20 The presence of nonfrivolous federal claims means defendants’ burden to disentangle the  
21 recoverable fees from the nonrecoverable fees was “from a practical standpoint extremely  
22 difficult to carry.” *Harris*, 631 F.3d at 972. Defendants’ motion for attorneys’ fees does  
23 not attempt to identify which fees were incurred in defending against which claim, so the  
24 motion is denied.

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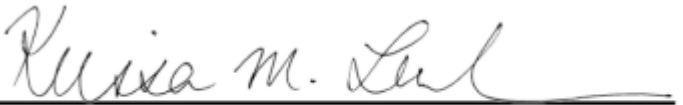
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1 Accordingly,

2 **IT IS ORDERED** the Motion for Attorneys' Fees and Costs (Doc. 72) is **DENIED**.

3 Dated this 8th day of July, 2025.

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7 **Honorable Krissa M. Lanham**  
8 **United States District Judge**  
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